



# California Regional Water Quality Control Board Central Coast Region



Linda S. Adams,

Secretary for

Environmental Protection

895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906

(805) 549-3147 • Fax (805) 543-0397

<http://www.waterboards.ca.gov/centralcoast>

Arnold Schwarzenegger

Governor

## IN THE MATTER OF:

**PROPOSED CEASE AND DESIST  
ORDERS AGAINST INDIVIDUAL  
PROPERTY OWNERS AND RESIDENTS  
IN THE LOS OSOS/BAYWOOD PARK  
PROHIBITION ZONE**

**NOTICE OF CHAIRMAN'S RULING  
REGARDING SUBPOENA DOCUMENTS  
SUBMITTED ON MARCH 13, 2007 AND  
DISCOVERY**

## IT IS HEREBY ORDERED THAT:

1. The "request for issuance of administrative subpoenas" by Antoinette Payne, Bruce Payne, John Der Garabedian, Jan Der Garabedian, Lawrence Kleiger, Julie Miller, Barry Carney, Katherine H. Thomas, and the Los Osos Community Services District, is denied.
2. Administrative subpoenas purportedly issued to Roger Briggs, Michael Thomas, Harvey Packard, Matt Thompson, Sorrel Marks, and Frank DeMarco by Shauna Sullivan of Sullivan and Associates on behalf of Antoine Payne, Bruce Payne, John Der Garabedian, Jan Der Garabedian, Lawrence Kleiger, Julie Miller, Barry Carney, Katherine H. Thomas, and the Los Osos Community Services District, are hereby quashed.
3. Designated Parties are hereby prohibited from conducting any further discovery involving examination of witnesses on the staff of the Central Coast Water Board related to proposed Cease and Desist Orders Nos. R3-2006-1000 through R3-2006-1049. Nothing in this order shall be interpreted to preclude any person from examining public records in the files of the Central Coast Water Board.

## Procedural Background:

On January 27, 2006, the Prosecution Team proposed Cease and Desist Orders against 45 randomly selected persons who reside or own property in the Los Osos community, and submitted replacement documentation proposing revised Cease and Desist Orders on September 7, 2006. Designated Parties were required to submit responses to the proposed Cease and Desist Orders, including documentary evidence and legal argument, to the Central Coast Regional Board by November 15, 2006. The Water Board scheduled hearings to consider the Cease and Desist Orders on December 14 and 15, 2006. Thirty Designated Parties indicated willingness to settle their cases with the Prosecution Team. The Water Board approved a proposed Settlement Agreement on December 14 and 15, 2006, and deferred the hearings for these thirty Designated Parties. Following hearings conducted on December 14 and 15, 2006, the Central Coast Regional Board issued thirteen Cease and Desist Orders

(Order Nos. R3-2006-1002, -1003, -1004, -1014, -1019, -1020, -1023, -1026, -1034, -1039, -1040, -1046, and -1047). The Water Board deferred two other Cease and Desist Orders to a future hearing for procedural reasons.

Of the thirty Designated Parties who agreed to sign the Board approved settlement agreement, seven withdrew their commitment. Accordingly, nine of the original 45 proposed Cease and Desist Orders remain to be adjudicated. On January 22, 2007, a panel of the Water Board held a hearing and decided to recommend that the full Water Board issue Cease and Desist Order Nos. R3-2006-1008 and -1041. The full Water Board will consider Cease and Desist Orders No. R3-2006-1008, and -1041 on May 10, 2007. Hearings for the seven remaining Cease and Desist Orders have not been scheduled, and will not be scheduled until after May 10, 2007.

On March 13, 2007, Antoinette Payne, Bruce Payne, John Der Garabedian, Jan Der Garabedian, Lawrence Kleiger, Julie Miller, Barry Carney, Katherine H. Thomas, and the Los Osos Community Services District, by their attorney, Shauna Sullivan of Sullivan and Associates, requested administrative subpoenas for the depositions of Roger Briggs, Michael Thomas, Harvey Packard, Matt Thompson, Sorrel Marks, and Frank DeMarco (the prospective witnesses). Simultaneously, Shauna Sullivan purported to issue subpoenas for the depositions of the prospective witnesses as permitted by Section 11450.20 of the Government Code.

The Prosecution Team submitted a motion to quash the subpoenas for Roger Briggs, Harvey Packard, Matt Thompson, Sorrel Marks, and Frank DeMarco on March 23, 2007, and requested a protective order against further discovery to Central Coast Regional Water Quality Control Board staff.

### **Subpoenas Defective**

The subpoenas "issued" in this instance were facially defective inasmuch as they purported to be issued under the authority of the San Luis Obispo County Superior Court despite the absence of any pending litigation involving the prospective witnesses in the Superior Court; the subpoenas include erroneous case numbers (from a prior, court dismissed, petition for a Writ of Mandate staying the Central Coast Water Board from conducting hearings on the proposed Cease and Desist Orders) and erroneous lists of parties seeking to depose the prospective witnesses (also from the dismissed Writ action). Furthermore, there is no hearing currently scheduled before the Central Coast Water Board that would justify the issuance of subpoenas and, as pointed out by Reed Sato, the time for discovery regarding still pending Cease and Desist Order proceedings for those who had their hearings deferred has passed.

### **Protective Order**

A protective order is necessary to preclude any additional attempts to issue or request subpoenas for the deposition of witnesses on the staff of the Central Coast Water Board. Designated Parties have attempted to use inappropriate demands for discovery to obstruct

Central Coast Water Board proceedings in this matter. The Central Coast Water Board has not scheduled hearings for the Designated Parties who seek subpoenas to depose prospective witnesses; however, even if such hearings had been scheduled, the Designated Parties will not be able to submit additional evidence that might be discovered by deposing the prospective witnesses to the Central Coast Water Board, as the deadline for Designated Parties to submit their responses to the Prosecution Team case was November 15, 2006. The Central Coast Water Board's decision at the hearings conducted on December 14 and 15, 2006 to defer the hearings for Designated Parties who indicated willingness to negotiate settlement with the Prosecution Team did not extend the deadline for submission of responsive documents, which had already passed. A protective order will preclude parties from abusing discovery tools in the absence of any pending proceedings.

#### **FURTHER PROCEEDINGS REGARDING PROPOSED CEASE AND DESIST ORDERS**

On May 10, 2007, the Central Coast Water Board will consider several items related to the issuance of Cease and Desist Orders against property owners and residents in the Los Osos/Baywood Prohibition Zone:

1. Consideration of the January 22, 2007 Panel Hearing recommendation regarding proposed Cease and Desist Order Nos. R3-2006-1008 and R3-2006-1041.
2. Reconsideration of Cease and Desist Orders previously issued on December 15, 2006 to individuals who now wish to settle (if any).
3. Consideration of how to proceed with the seven remaining proposed Cease and Desist Orders (Order Nos. RB3-2006-1000, -1017, -1025, -1029, -1036, -1042, -1045), and all other future enforcement proceedings for individuals who own or use septic systems in the Los Osos Prohibition Zone.

The Advisory Team will not schedule additional hearings regarding proposed Cease and Desist Orders until after the Central Coast Water Board's discussion of item 3, above, on May 10, 2007 (which is item No. 6 on the Central Coast Water Board's May 10, 2007 agenda). If you have questions, please call Michael Thomas at 805-542-4623, or send an e-mail to [mthomas@waterboards.ca.gov](mailto:mthomas@waterboards.ca.gov).

*for* Michael Thomas  
Jeffrey Young, Chairman  
Central Coast Water Board

April 9, 2007  
Date